

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: October 13, 1999
TIME: 10:30 a.m.
PLACE: Tex Drive In
Honokaa, Hawaii

Chairperson Timothy E. Johns called the informational meeting of the Commission on Water Resource Management to order at 11:00 a.m.

The following were in attendance:

MEMBERS: Mr. Timothy Johns
Mr. Robert Giraldo
Mr. Brian Nishida
Mr. David Nobriga
Mr. Herbert Richards, Jr.

EXCUSED: Dr. Bruce Anderson

STAFF: Ms. Linnel Nishioka
Mr. Roy Hardy
Ms. Faith Ching

COUNSEL: Mr. Edsel Yamada

OTHERS:

Senator Dwight Takamine	Marjorie Ziegler	Manabu Tagomori
Robert Lindsey	Linda Shackelford	Lawrence Miller
Thomas Crabb	Bob Shioji	Paul Matsuo
Dudley Kubo	Presley Pang	Zachary Gibson
Christopher Rathbun	Michael Cruise	Noelani Mason
Charles Espin	Chester Koga	

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties. The items were not taken in the order posted on the agenda.

AGENDA 1

Roy Hardy gave a power point presentation on the Lower Hamakua Ditch Complaint and the Lalakea Ditch Complaint.

Marjorie Ziegler, Earthjustice Legal Defense Fund, Inc., who filed the complaints on the Lower Hamakua Ditch and the Lalakea Ditch on behalf of Waipio Valley Community Association, gave an oral testimony. Ms. Ziegler stated that Earthjustice agrees with the staff recommendation in the investigation report on the Lower Hamakua Ditch and made the following comments. For Waima Stream, the Water

Code requires DOA or KSBE to obtain a permit to abandon and remove stream diversion works. She recommended that DOH survey the abandoned Waima site to ensure the proper removal and disposal of structures and any hazardous materials. If Lalakea Ditch diversions have been abandoned, as WVCA reports and staff's investigation suggests, then KSBE must obtain a permit to abandon the diversions and remove the associated stream diversion works. KSBE should also provide the required monthly reports describing the specific nature, amount, and purpose of any existing diversions, so that the Commission and the public can determine whether they are reasonable and beneficial. In summary, Earthjustice asked the Commission to consider holding a workshop, public information meeting, or briefing on stream diversions and restoration, so that these issues can be discussed more fully.

Chairperson Johns adjourned the informational briefing at 11:49 a.m.

AGENDA 2

Chairperson Johns called the regularly scheduled Commission meeting to order at 11:50 a.m.

1. Minutes of the May 21, 1999 meeting

Correction on page 2 of the May 21, 1999 meeting under Old Business, the second paragraph last line should read ...“Agribusiness” Development Corporation.... instead of “Agricultural”.

MOTION: (Richards/Nobriga)

To approve the minutes as amended.

UNANIMOUSLY APPROVED AS AMENDED.

Minutes of the July 21, 1999 meeting

Correction on page 5, second to the last paragraph should read ...“Agribusiness” Development Corporation.... instead of “Agricultural”.

MOTION: (Richards/Girald)

To approve the minutes as amended.

UNANIMOUSLY APPROVED AS AMENDED.

Minutes of the September 15, 1999 – deferred

The minutes of the September 15, 1999 meeting was deferred due to the absence of Commissioner Anderson, who needed to be present.

2. Old Business/Announcements

Deputy Director Linnel Nishioka announced that the public hearing on the reevaluation of the Pearl Harbor Aquifer is currently scheduled for November 17 at 1:30 p.m. on Oahu. This public hearing is to receive public testimony on the staff's proposed revisions of the Pearl Harbor Sustainable Yield.

The second announcement was the Statewide Framework for Updating the Hawaii Water Plan. The Honolulu Board of Water Supply is currently undertaking revisions of their county water use and development plan. The Commission staff is in charge of the statewide water plan. For

the past two years, staff has been working on a statewide framework of how the components of the plan should be done and how the public participation through an integrated resource plan process should be conducted. Staff is working on a draft and will be released through our website on October 29, 1999. A formal presentation will be presented to the Commission and open for public comments at the November 17, 1999 meeting. Copies will be available on November 1, 1999 for persons requesting for them.

On the old business, Deputy Director Nishioka stated that East Maui reports that were being produced by the U.S.G.S. have been received and are under review. Discussions with U.S.G.S. about delinquent reports are continuing.

Commissioner Richards recollected that the Commission paid 40% of the total cost of the reports and asked if a peer review of the report by hydrologists was done pursuant to the Commission's May 7, 1997 action.

Deputy Director Nishioka answered in the negative and stated that an investigation is being conducted as to why a review was not done.

Commissioner Richards suggested that at a future meeting this subject be placed on the agenda.

Chairperson Johns suggested that staff contact U.S.G.S. and inform them that this item will be placed on a future agenda. Chairperson Johns was also concerned that even though the State is considered a cooperative with U.S.G.S., we are not being treated as cooperative partner. If this is such, then the Commission should consider using their monies elsewhere. Staff needs to find out what the parameters are going to be for a continued relationship with U.S.G.S.

Deputy Director Nishioka agreed and stated that they will be put on the next agenda.

3. Department of Agriculture's Request for Extension of Time on the Commission on Water Resource Management's Restoration Order for the Diversion (SCAP-HA-116) on Hakalaoa Stream Honokaa, Hawaii (TMK 4-8-03:06)

PRESENTATION OF SUBMITTAL: Deputy Director Linnel Nishioka

RECOMMENDATIONS:

That the Commission amend the recommendations as follows:

1. Find that in addition to KSBE, the DOA is additionally responsible for addressing the violation determined by the Commission at its May 5, 1997 action meeting on SCAP-HA-116.
2. Extend the December 1, 1999 deadline and issue an order to KSBE & DOA that the illegal diversion on Hakalaoa Stream above Hiilawe Falls (SCAP-HA-116) be removed no later than August 1, 2000, and that maximum fines will be assessed for failure to remove the diversion after the August 1, 2000 deadline.
3. Require DOA to submit monthly written reports on the status of the Hakalaoa Falls restoration with respect to the 10/1/99 column of Table 1 starting November 15, 1999.

4. Authorize the Chairperson to schedule a Commission meeting to accelerate deadlines identified with respect to recommendations 2 and 3.
5. Require DOA and/or NRCS to submit permit applications to address the flooding concerns of the WTFA.
6. The staff will initiate the petitions for the instream flow amendments in accordance with the recommended alternative plan that was set forth in the final EIS. The four streams that the petition for interim instream flow amendments are the Kawainui, Alakahi, Koiawe and Waima Streams.

Deputy Director Nishioka made a correction to the staff submittal. At the top of page 10, first line, "which the WTFA supports" should be deleted.

TESTIMONIES:

Dudley Kubo, Natural Resources Conservation Service (NRCS) stated that the federal government through NRCS is assisting the State Department of Agriculture (DOA) with technical planning assistance and also with financial assistance to implement the project. The first component identified for installation is to repair the falls. He stated that there are \$1.2 million that was encumbered by Senator Inouye for agriculture water resource projects in Hawaii. Although there is lots of paper work involved, Mr. Kubo stated that the watershed agreement could possibly be signed the first part of November and the request for operations authorization can be signed sometime in November. He anticipates that August 1, 2000 is a realistic deadline for the completion of the repair of the falls.

Paul Matsuo, DOA, briefed the Commission on very detailed steps for the contracting method using a 4-part schedule: (1) permit certification and applications, (2) final Environmental Impact Statement, (3) Board approval, and (4) Request for Proposal (Governor's approval). Mr. Matsuo anticipates all of this to be completed by June 30, 2000. With a very optimistic projection, Mr. Matsuo estimates construction to start by July 1, 2000.

Director of the Department of Agriculture, Mr. James Nakatani's testimony was put on record. In summarizing, he asked that the Commission extend the deadline to August 30, 2000 instead of August 1, 2000.

Presley Pang of the Attorney General's Office representing the Department of Agriculture was present to answer any questions.

Representative Dwight Takamine testified that he supports the recommendations of staff and was very grateful to the Commission in showing concern and having a meeting in Honokaa. He also stated that the Commission has the difficult task of coming up with a balanced decision so that all concerns will be compromised.

Chairperson Johns called a recess at 12:58 pm.

The Commission meeting was resumed at 1:05 pm.

Robert Lindsey, Director, Hawaii Island Region, KSBE, spoke in support of the DOA's request for extension. He is looking forward to working with the farmers, ranchers, DOA and the NRCS.

Linda Shackelford of the Hamakua Farm Bureau encouraged the Commission to extend the deadline for the DOA. She is very hopeful that the ditch will be repaired.

Lawrence Miller, Vice President of the Waipio Community Association, testified that the DOA should be fined for not meeting deadlines. Mr. Miller also clarified that the Waipio Community Association is a community-based organization. Out of 30 members, 6 are full time taro farmers.

Chairman Johns summarized Thomas Crabbe, Chairman of the Hamakua Soil and Water Conservation District's testimony in support of the recommendation of the staff.

Robert Shioji, Hamakua Farm Bureau, supports the Water Commission's recommendations. After all these years of waiting the people of Hamakua are confident that the work is going to commence.

Zachary Gibson, Chairman of the Hamakua Ditch Committee of the Farm Bureau, supports the Commission's recommendation to extend the deadline requested by the DOA.

Christopher Rathbun, Wapio Community Association, testified in opposition to the DOA's extension request.

Michael Cruise, Legal Aid Society of Hawaii, testified that the DOA has not shown good cause for the request to extend the deadline. He requested that the Commission deny the extension request and enforce the December 1 deadline.

Noelani Mason testified against staff's recommendation to extend the DOA's request to extend the deadline.

Chairperson Johns announced that Lorna Young and Jeff Quin submitted written testimony opposing the staff's recommendation for DOA's extension request.

Charles Espin, Legal Aid Society of Hawaii, stated that Legal Aid Society of Hawaii is the reason why this meeting has come to this point because of the letter they wrote requesting an update of this issue. He feels that even though people have put lots of energy into this meeting, the energy has not been put in the right place.

Chairperson asked Paul Matsuo to clarify why can't we do that, why doesn't it make sense to do what was stated on page 61 of the Final Environmental Impact Statement which states:

"The medium term repair will allow the removal of the Hakalaoa Falls diversion and restoration of the falls."

Mr. Matsuo stated that at the time that was written, the DOA was assuming that the KSBE lease would be in place, signed and sealed and the funds would have been appropriated and would have gone through and Environmental Assessment which has a shorter term than an

Environmental Impact Statement. Because of the opportunity at that time, the final EIS would be ready in order for DOA to meet the December 1 deadline. We had said that we would not go that route. The reason is that if the watershed project comes in effect, the entire process would have to be done over. Also, the design of the quick fix would not guarantee the integrity of the tunnel just in case large boulders come down and hit the quick fix.

Commissioner Richards commented that he will vote for the motion but wants to make sure that the tunnel behind Hakalaoa Falls is in the first increment of construction and possibly the falls can be put back in operation prior to the end of the time limit that the Commission is granting the DOA. He doesn't see how the entire ditch must be operating before the falls can be put back into operation. He stated that it would be wrong if the Commission did not recognize that the repair of the tunnels could be done first and then repair the remainder of the tunnel. He encourages DOA to work for the opening of the falls as soon as possible by getting the tunnel behind the falls completed early.

A motion was made by Commissioner Girald to approve staff recommendation with the amendment to grant the Department of Agriculture until August 30, 2000 to remove the diversion on Hakalaoa Stream above Hiilawe Falls.

MOTION: (Girald/Nishida)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED.

Chairperson Johns called a recess for lunch at 2:00 p.m.

The Commission meeting was resumed at 2:30 p.m.

7. Department of Transportation, Application for a Stream Channel Alteration Permit (SCAP-MA-290), Kaupakalua Bridge Replacement, Kaupakalua Stream, Haiku, Maui, (TMK: 2-7-13:67)

PRESENTATION OF SUBMITTAL: Roy Hardy

RECOMMENDATION:

That the Commission amend the recommendations as follows:

That the Commission approve a stream channel alteration permit for the construction of a new highway bridge at Kaupakalua Stream, Haiku, Maui (TMK:2-7-13:67). The permit shall be valid for two years subject to the standard stream channel alteration permit conditions in Exhibit 4 and the following special conditions:

a. The applicant shall conduct an archaeological survey of the vicinity of the proposed bridge. The survey shall be done by a qualified archaeologist, and the survey shall be acceptable to the Division of Historic Preservation.

b. The applicant shall provide the Division of Historic Preservation with photographs of the existing wooden Kaupakalua Bridge. Such photographs shall comply with

standards established by the Historic American Buildings Survey (HABS), and be acceptable to the Division of Historic Preservation.

c. The applicant shall be responsible for removing the existing Kaupakalua Bridge foundation to match the existing stream bottom elevation. Such removal shall be acceptable to the Land Division, Engineering Branch and Commission staff.

d. Prior to construction the applicant shall prepare a Best Management Practice Plan (BMPP) to minimize water pollution during construction of the bridge. The BMPP shall be acceptable to the Department of Health and the applicant shall abide by the provisions of the BMPP during construction. The applicant shall provide the Commission with the Department of Health's acceptance of the BMPP.

TESTIMONIES:

Chester Koga of RM Towill Corporation who represented the Department of Transportation made clarification in that they did further consult with the County of Maui regarding the Special Management Area (SMA) permit. The County of Maui determined that since the mauka route will be taken the SMA is not required. The reason is that the boundary line is makai side of the highway. The archaeological survey of the bridge has been conducted for both alignments and approaches. The report has been completed and has been included as part of the final environmental assessment for the review by the State Historic Preservation. Mr. Koga made note of recommendation c. of the staff submittal. He stated that in discussions with engineers and the Army Corps of Engineers, they suggested that the foundations be taken down to remove the concrete portion above the ground rather than go down and dig the entire bridge out. If the entire bridge is dug out, there will be more disruption and silt will be released into the stream. One of the reasons why the Corps determined that a permit was not required was that no work would be done in the actual area where the stream is flowing.

MOTION: (Nobriga/Girald)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED.

4. REVOCATION OF WATER USE PERMIT, Castle & Cooke, Inc., Dole Cannery Wells (Well Nos. 1952-11, 13, 20, & 21), Kalihi Groundwater Management Area, Oahu

PRESENTATION OF SUBMITTAL: Roy Hardy

RECOMMENDATION:

Staff recommends that the Commission:

1. Revoke the water use permit for Well Nos. 1952-11, 13, 20, & 21 (WUP No. 20).

MOTION: (Nobriga/Girald)

To approve the submittal.

UNANIMOUSLY APPROVED.

5. **Honolulu Board of Water Supply, APPLICATION FOR A WATER USE PERMIT, Kapalama #2 & #1 Wells, WUPA No. 408, Well Nos. 2052-13 & 14, TMK 1-6-22:07, Future Municipal Use for 1.292 mgd, Kalihi Ground Water Management Area, Oahu**

PRESENTATION OF SUBMITTAL: Roy Hardy

RECOMMENDATION:

Staff recommends that the Commission defer this application to the next Commission meeting on Oahu.

MOTION: (Nobriga/Richards)

To approve deferral to November 17, 1999

UNANIMOUSLY APPROVED.

6. **George P. Dubie & Nancy A. Dubie, Trustees Of the Daniel Dubie 1998 Q-Tip Trust Dated 9/28/98, APPLICATION FOR WELL PERMITS, Gaia Well (Well No. 3802-01), Well Construction: 6-inch Casing Diameter, 140+-ft. Deep Well, Pump Installation: 1.3 GPM for Domestic Use, TMK 5-9-24:012, Haleiwa, Oahu**

PRESENTATION OF SUBMITTAL: Roy Hardy

RECOMMENDATION:

That the Commission amend the recommendations as follows:

- A. That the Commission approve the issuance of a well construction permit for Gaia Well (Well No. 3802-01), subject to the standard conditions in Exhibit 3, and the following special conditions:
1. Attached is a copy of the Department of Health's (DOH) review comments. Please note DOH's requirements related to discharge of effluent from well drilling activities.
 2. Standard Condition 2 is modified to exempt the permittee from the requirements for pump tests.
 3. Standard Condition 6.e. is waived.
 4. The construction of the well shall conform to the Hawaii Well Construction and Pump Installation Standards (January, 1997).
 5. The permittee shall obtain the signature of a licensed contractor (C-57) on the permit and return a validated copy of the permit to the Commission prior to the start of any work authorized by this permit.
 6. The permittee is hereby noticed that a water use permit must be obtained prior to using the well should it be used for more than a single household's domestic needs.

- B. That the Commission authorize the Chairperson to approve and issue a pump installation permit subject to the Standard Pump Installation Conditions in Exhibit 4.

MOTION: (Girald/Richards)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED.

Chairman Johns adjourned the meeting at 3:20 pm.

Respectfully submitted,

FAITH F. CHING
Secretary

APPROVED AS SUBMITTED:

LINNEL T. NISHIOKA
Deputy Director